G. R. S. IX-5]

Preserve

*Previous references.*
Cts 288-16 (Jail)
" 178-17 (102)
" 180-18 (1-2)

1918.

( Ao )

File No. 228-18

Serial Nos. 102

*Later references.*
Cs 39-33-13, 15, 17, 19, 28, 30 & 40.

# GENERAL AND REVENUE SECRETARIAT.

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*Serial Nos.* Two

Part B for June 19.

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SUBJECT.

Memorial of D'Souza praying for remission of sentence of transportation for life attained in CA No 14 of 1918-19 on the file of the Ch: Court

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Secy to the Regr Ch: Court
No G 28148 Dy 19.6.19
To Copy of order passed by His Highness on the prisoner D'Souza's memorial commuting the sentence of transportation for life one of rigorous imprisonment for 7yrs.

W D 1250—GPB—30,000 - 28-1-19

G. R. S. III—1] 1918-19

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 228-18

FILE HEADING.

Memorial of D'Souza praying for remission of sentence of transportation for life affirmed in C. A No 14 of 1918-19 on the file of the Chief Court

From

The Regr. Chief Court.

No. 525/Cr. Dated 17-3-1919 Received 20-3-1919

| Diary No. 13205 | Enclos. Records & Spare Copies. | Serial No. 1. |
|---|---|---|

BRIEF ABSTRACT OF LETTER.

Forwards the memorial of D'Souza accd. in Shimoga Sessions Case No 6 of 1917-18 on the file of the Sessions Judge, Shimoga & appellant in C. A No 14 of 1918-19 on the file of the Chief Court.

NOTES AND ORDERS.

1) Subm. for orders

a) Put up a transl. Please as usual D. G. 22/3.

2) 21/3 Ash 21/3

3) Subm. D'Souza, the prisoner, was a constable Duffadar in charge of

NOTES—First Sheet.

G. R. S. III-2]

General and Revenue Secretariat.

C, File No. 226 of 1918.

Serial No.

The Prisoner on Post ... was found guilty of murder of one Hala, convicted & sentenced to transportation for life by the Sessions Judge, Shimoga. The conviction & sentence was affirmed on appeal, by the Chief Court.

The prisoner now memorialist praying for the remission of the sentence & for an order for retrial on the ground of innocence.

He states in the memorial that while he had gone on Forest duty he was asked by the Forest Rangers to help them in investigating certain cases of illicit cutting of timber & bamboos from the State Forests.

After they had finished the search they came to the village temple where he saw one Boyan of 16 years of age going with a gun. He asked Boyan whether he had a licence. He replied

NOTE—Contn. sheet.

General and Revenue Secretariat. | C/5 File No. 218 of 1918.

Serial No.

That it was in the entirely. As the case looked suspicious the memorialist caused him to be of the boy with the gun which was placed on the head of the servant. The boy tried to escape and so he was forcible to sit down when he cried out. On hearing the cry some 50 villagers came to the spot & attacked the prisoner for wresting away the gun. In the confusion the loaded gun went off by accident and fell down.

The memorialist thereupon went away to the nearest police station to make a report of the case.

The memorialist further represents that proper justice was not done to him in the Sessions Court and the evidence of the Police who spoke the truth, was not properly appreciated.

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

C/ File No. 228 of 1918.

Serial No.

that the P. W. 1 did not say before the committing magistrate as to who shot at Hala, whereas he deposed before the Sessions Judge that the prisoner handed the gun and pointed it at Hala

The memorialist adds that he had no motive to shoot at Hala that the case had been set upon him on account of mills by Badra Gowda and others who had been foremen by conviction in a case investigated by the memorialist

8/9
21/3

4) The petitioner was a Police Duffedar in charge of Alasur and Sajare Taluq, in the Shimoga District. He was tried & convicted for the murder of one Hala in Shimoga Sessions case No: 6 of 1917-18 & sentenced to transportation for life. On appeal, the conviction & sentence were upheld by the Chief Court & petn. appeal was dismissed in Crimt. Appl. No: 14 of 18-19.

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

C/ File No. 228 of 1918

Serial No.

The Petr has now filed a memorial praying for an order of release on the ground of innocence, or for an order for retrial. The Pleader state in the confusion caused by the villagers the loaded gun went off accidentally & killed Hala and that proper justice was not done in the Session Court ——— Sub-d for order (b) 1 & 6 has been proved by the evidence for the Prosn, which is believed both by the Sessions Judge & the Chief Court Judges that the Petr shot the deceased Hala & that it was a deliberate act on the part of the Petr. According to the story of the defence set up before the Sessions Judge, the villagers appeared on the scene with a shot gun & in the confusion that followed among the villagers themselves a shot was fired from the shot gun killing Hala. The theory started in the present memorial is opposed to the above defence & there can be no doubt that it is fictitious. The assessors have unanimously held that the Petr is guilty & very cogent reasons

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat. | No. File No. 228 of 1918

Serial No.

have come prima in the Chief Court to uphold the Conviction. It is difficult to find any redeeming features in this case... No adequate grounds seem to exist for clemency & the petn. request cannot be favourably viewed in the case. The memorial may perhaps be rejected.

D. M. 21/4

Chief Secy
I Member

1077/5-4-19

Secy
5/4/19

D. M. 5/4

6) The memorialist D'Souza was originally committed for trial on a charge of culpable homicide not amounting to murder (sec. 304 I.P.C.). The charge of murder (s. 302) upon which he was eventually convicted was added in the Court of Session. That conviction was upheld by the Chief Court because there was little room for doubt upon the evidence that the memorialist pointed the gun at the deceased Hala, that (judging from the words of abuse

NOTE—Contn. sheet.

WD A 1789—GPB—60,000—20-3-18—S.

Serial No.

accompanying the act) he must have fired the gun intentionally, and that Hala fell down dead. At the same time it was clear that the man was not actuated by previous ill-will or malice, but acted — as found by the Sessions Judge — without premeditation, in a sudden fit of rage caused by Hala's vehement remonstrance. In affirming the sentence of transportation for life, the Judges, it will be seen, remark that "it is the least that the law allows to be inflicted."

7) No such restriction circumscribes the exercise of prerogative and as one of the Judges that disposed of the appeal in the Chief Court, I will only say that, if it be desired to temper justice with mercy, a commutation of the sentence to one of rigorous imprisonment for ten (or possibly even seven) years would serve the purpose.

8) The records throw no light on the antecedents of the memorialist D'Souza; the fact that he has risen to the rank of first class constable suggests a certain amount

NOTE—Contn. sheet.

WD A 1789—GPB—60,000—20-8-18—S.

General and Revenue Secretariat. | File No. 228 of 1918.

Serial No.

intelligence and capacity as well as past good work. Upon this point the Temporary Member in the capacity of D. & C. of Police may be in possession of definite information.

9/5 This may be treated as a Council case.

7.5.19

Chief Secy (2) Submd for orders
D.M.
9/5

Temp: member)

CSS
11/5/19

11 No offence available under this Act. Chief Secy & Police may send him Character & bad reputation. But apart from it, I agree with 1st Member that sentence may be limited to one of Deportation simpliciter for a term of 5 years.

Chief Sec
1/5

1st May perhaps be submitted

Council matter
D.M.

Chief Secy: B may be dealt with by Executive.

D.M.
2/5.

CSS
6/5/19

Dewan

D.M.
6/5.

WD A 1799—GPB—60,000—20-3-18—S.

DEWAN'S OFFICE.
Recd. on MAY 6 1919
Reg. No. 6811.

NOTE—Contd. sheet.

C. 816 13205

[G. R. S. III-2]

General and Revenue Secretariat. | File No. 228 of 1918.

Serial No.

May be commuted to 10 years,
may be remitted to the
Viceroy.
4
12/5—
Circulate
7003-359
14-5-19
1375 P.M. 12/5
May be commuted to Seven years
Peel
15-5-19

NOTE—Contn. sheet.

C. 816'

*Extract from the Proceedings of the* 490th *Meeting of the Council of His Highness the Maharaja, held at Bangalore on the* 19th May *19* 19

7. Subject.-Clause vi of the Schedule.

Memorial of D'Souza praying for remission of sentence of transportation for life passed on him by the Sessions Judge of Shimoga.

Opinion of the Council.

The sentence may be commuted to rigorous imprisonment for seven years.

Sd. A.R.Banerji,
Offg. Dewan of Mysore.

"EXTRACT"

C Balasundaram Jr

*Chief Secretary to Government.*

WD 1148—GPB—1,000—23-12-18.

WD 1233—GPB—60,000—1-12-16—S.

G. R. S. III-2]

General and Revenue Secretariat.

C. 816

Courts File No. [illegible] of 1918-19

Serial No.

To the Assistant Secretary, Branch III (Protection)

for kindly submitting the file to the First Member of Council with a draft Final Note.

GS 20/5/19

Draft D. M. 21/5

Subd. with D. F. N.

GS 21/5 ASG 21/5

Marco pdc. is typed D. M. 24/5

Typed copy to put into

GS 26/5 ASG 26/5

subd. with D. F. N. D. M. 29/5.

I Member

1785 30.5.19

GS 30.5.19

D. S. N. Submitted?

Dewan

GS 31/5/19

Draft D. M. 31/5

DEFENCE OFFICE.
Recd. on MAY 2 1919
Reg. No. 7622

NOTE—Contn. sheet.

Final Note by the First Member of Council.

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Subject:—

Memorial of D'Souza praying for remission of the sentence of transportation for life passed on him by the Sessions Judge of Shimoga.

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D'Souza, a Police Constable, was originally committed for trial on a charge of culpable homicide not amounting to murder, under Section 304 Indian Penal Code, for having killed one Hala by shooting him with a gun. A charge of murder under Section 302 was added in the Court of Session; and the prisoner was convicted of that offence and sentenced to transportation for life. The conviction and sentence were upheld by the Chief Court on appeal.

"L

Paper under disposal

The memorialist prays for remission of the sentence on the ground of innocence.

2. There is no room for doubt upon the evidence that the memorialist fired the gun at the deceased intentionally and that Hala fell down dead. At the same time it is clear that the man was not actuated by previous ill-will or malice, but acted - as found by the Sessions Judge - without premeditation, in a sudden fit of rage caused by Hala's vehement remonstrance. In affirming the sentence, the Judges of the Chief Court remark that "it is the least that the law allows to be inflicted". But no such restriction circumscribes the exercise of prerogative. No definite information is available regarding the character and antecedents of the memorialist; but the fact that he has risen to the rank of a first class constable suggests a certain amount of capacity as well as good work.

3. The Council after carefully considering the matter is

Page 10 of Office Notes

of opinion that the sentence of transportation for life may be commuted to one of rigorous imprisonment for seven years.

4. The recommendation of the Council may be graciously approved.

30th May 1919.

Member of Council.

*Submitted to His Highness.*

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*I submit herewith a Final Note by the* First *Member of Council on the subject of* the Memorial of D'Souza praying for remission of the sentence of transportation for life passed on him by the Sessions Judge of Shimoga, *for His Highness' gracious approval.*

Dewan.

6·6·19

31/5/19

**Record of Cases submitted for the Orders of His Highness the Maharaja.**

## *Subject.*

Memorial of D'Souza praying for remission of the sentence of transportation for life.

1286.

## *Order.*

~~KRW~~

7/6/19

Chiefsecy 6.6

Prefer
Memo draft submit to
Member -

9/6/19

11/6

11/6

G. R. S. III-2]

General and Revenue Secretariat.

CS File No. 228 of 1918.

Serial No.

Subd. with a draft to the Regr. Chief Court and a draft and fair of H. H's order for favour of signature by the Dewan. (vide CS file 288-16 prescribing the practice in such cases) Has to be submitted to the Dewan

Sd/- Chiefs 11/6 ARL 12/6

D.M. 12/6.

Dewan

DEWAN'S OFFICE. Recd. on JUN 14 1919 Reg. No. 7855

CSS 13/6/19 D.M. 13/6

Issue CSS 15/6/19. D.M. 15/6

2. To the Registrar, Chief Court No. 2814 & 15.6.19

Forwards Copy of order passed by H.H. on the petitioner's Sonya's memorial commuting the sentence of transportation for life to one of rigorous imprisonment for 7 years.

B 246 23 JUN 1919

NOTE—Contn. sheet.

Recd: 525 with records.

GEN. & REV. SECTT. Chief Secrett 19 MAR 1919

Bangalore,

Dated 17th March 1919.

63716

13205

From

THE REGISTRAR OF THE

CHIEF COURT OF MYSORE.

E5 228-18

No.

To

THE SECRETARY TO GOVERNMENT,

~~GENERAL AND REVENUE DEPARTMENTS.~~

Bangalore

Sir,

I am directed to forward a memorial addressed to His Highness the Maharaja by D'Souza accused in Shimoga Sessions Case No. 6 of 1917-18 on the file of the Sessions Judge of Shimoga Division and appellant in Criminal Appeal No. 14 of 1918-1919 on the file of this Court.

The entire record of the case is herewith forwarded.

I have the honor to be,

Sir,

Your most obedient servant,

Srinivasaiyar.

for Registrar.

GPB—1,000—16-8-12

N.624

1/4
1918-19

ಬಿಂಡ್ಲಾಪಲ್ಲಿಗಾಂವಿ ಲಿಗಿಬಿಟ್ಟಿದ್ದಿ. ಕ್ರೋಡಿಬಿಟ್ಟಾ ವೆಳೆನಾಸ್ಯೋಟ್ಟಿಗೆನಬಡಿ. ಬಿಟ್ಟು ಚಿಕ್ಕಾಳ್ಳಿ ಕ್ಯೋಟ್ಟಿಗೆನಬರಿ
ಕೂಡಾ ನನ್ನೆಬಿಡ್ಡಿಗೆಬಿಂದಾ ನನಗುಂ ಕ್ಯೋಲತೆಜ್ಞಾನ್ಗೆಲ್ವಿಲಾರಿತ್ತಾಳೆ.

(೫) ಡಾಂಗು ಅಕ್ಕಿಮೊಗಂಟ್ಟೆಡ್ಡಾಲುದಬ್ಬಡಿಜಾತವಿಂಬುವನ್ಸಾಗೆ ಸ್ಟಮಿಂಗದಮ್ಮಿನಲಿಯಲ್ಲಿ
ಮೂಮೂಡಿ 1½ ಬರಿಮೂಲಲೆ ತಿಂಗಳಡಿಂದಿ, ಬಂದುಫ್ಲೋರಿಡ್ಡೆಗೆಲ್ಲಿದಪ್ಪಿ ೬೦-೦-೦ ಅರವಲ್ಲೆಲಿಂಡಾ-
ಲುಬಿಬರ್ಗಾನಿಕಾಳ್ಳಿದು ತೆ ಗೆಗಂಬಲ್ಲಿನಾನುಂತಕ್ಕಾಳ್ಳಿರಿ ತಲ್ಲಿಗೆನಿಂಬಾಹಾಯಳ್ಳಿಗೆಂಡ್ಡಲಿಂಡಾ ಲ ಚಿಬ್ಬಿನಮೂ
ಲಕ ನಪ್ಪಿಕಾರನು ತನ್ನೆಲಕ್ಷಲಿನಂಗಾನೆ ಬತ್ತಾಯಿ ಬಿಂದಮ್ಮಾಂಕ್ಕಿ ಜ್ಞೆಲ್ಲಿಬ್ಬಿ. ಲಬಿಗ್ಗೆಗಾರಿಬೂಬಾ ತಕೊಂ-
ಳ್ಳಲಬಿರ್ಗಾಲಿಂತ್ತಾ ನೆಲಿಗೆಳ್ಳಿನೊಂಡ್ಡಿರುಗ್ಗಾನಾಶಮೊಂತ್ತಿ ಬಿಡಲಬನಾಬನನಗೆಕ್ಕೆಲಲಿ ಅನ್ಸ್ಯಾಯಿಲೊ
ಬಿದ್ದಾಳೆ.

(೬) ಕಂಗಣಾಮ್ಮೆಲೆನಮೂಬಿಲಿಲು ಲರ್ಗಾಕಾರ್ಗಣಗಳ್ಳಿಮ್ಮೆಂಲಿಂದ ಲರ್ಗಾಲಿಕ್ಷಾರ್ಗಳಿಚೆ-
ಗಾಂಬಿಲಿಗೆಯಿಂದನನಗೆ ಬಿಡಾಂತೆ ಮೂಡಲ್ಲಿಕ್ಕೆ. ಅಥಬಾಗ್ಗನ್ನಾನನ್ನೆಬ್ಯೋಲೆ ಅನುಮಾನಗ್ಗಾಕ್ಕೆ-
ನಲಿಕ್ಕೆನೆ ಪ್ರೆಸಂ ಬಯ್ಯಲ್ಲಿ ಬಕ್ಕೆಲಿಬ ಮೊಗ್ಗಾಬಿಳಿಲಿ ಕ್ಕೋಲ್ಲಿಲ್ಲಿಕ್ಕೆ ಅಪ್ಪಿಗೆಲಿಂಗಂಬ್ಯೆಕ್ಕೆಂಬೂಚಿಬಿಡ್ತೆಂ

(೭) ಬಿಟ್ಟುನಾಮೆ ಶ್ಯಗಂಸೆಲಿಂಮೂಡಿ 18 ಬಸ್ಟ್ಯೆಗೆಳ್ಳಿಂದ ಬ್ಲೋಲ್ಲಾನೆಖಾತೆಲಿಯಲ್ಲಿಕಾಕಣಿಗೆ
ಲುಬ್ಬಿ ಅಗಲ್ಲಾಲ್ಲಾನೆರಿಂದ ನಾಕೆಲಿಮೊಂತಿಕ್ಕೊಂಡುಬಡಿ ಬಲ್ಲಿ. ನೆಲ್ಲಿಬಿಟ್ಟೆತೆಲೆಬ್ಬಿಬನ್ಸಾಗೆ
ಬಂದುಶಲಿಂದ ಫ್ಲೋರಿಲಿಯಲ್ಲಿಕ್ಕೆ ಕಾರ್ಗಣಲಿ ಲುರ್ಗಾ ಬಿಟ್ಟೆನಾಮೆ ಫ್ಲೋರಿಲಿಯ ಲರ್ಗಾಗ್ಗಾ,
ಲನ್ಲೆಕ್ಕೆನ ನೆಲಿಕಬ್ಬಿದಲ್ಲಿ ಒಲಿಲ್ಲೆಬಲ್ಲಿಗೆಳ್ಳಾಂದಾ ನಾಕೆಲಿಬಿಂಡಿಲಿತ್ತೆಲುಬ್ಬಿನೆ ಲರ್ಗಾಲಿಬೊಲ್ಲಿ
ಲುಲತ್ಲಿ ಲೋಲ್ಲಾನೆಕ್ಕೆಲಿನಲೆಮ್ಮಂದ ದಿಂಬ ಅನೆಕೆಲಿಬನಲ್ಲಿಗೊನವೆಗೆಲಿಬ್ಬಿಲುಲಿಲಿಲಿ

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Wednesday, the 11th day of September 1918.

P R E S E N T:

Mr. Justice K.S. CHANDRASEKHARA AIYAR

and

Mr. Justice T. PARAMASIVA IYER.

| | |
|---|---|
| Petition of Criminal Appeal No.14 of 1918-19 against the conviction and sentence by the Sessions Judge of Shimoga Division, under section 302 of the Indian Penal Code, in Shimoga Sessions Case No.6 of 1917-18. | Appellant. 3677 D'Souza (Accused). |

J U D G M E N T.

We have carefully examined the evidence in the case, and feel no reason to doubt the correctness of the conclusion arrived at by the learned Sessions Judge, in concurrence with the unanimous opinion of the assessors, as to the guilt of the appellant. The prosecution 1st and 2nd witnesses Hutcha and Byra swear that the appellant snatched the gun, Article 1, from the hands of Byra after giving him a few blows; that when Byra cried out, the deceased Hala came and stood on the steps of the temple (on the pial of which the appellant was standing) and remonstrated with him for ill-treating the boy; and that thereupon the appellant, who got enraged, abused Hala, and fired the gun at Hala, who fell down dead. The prosecution 3rd witness Dabba, who was attracted by the cries of Byra, corroborates those witnesses to this extent that he says he heard the report of a gun when he approached the temple, that he saw the appel-

lant

lant and two others running away, and that prosecution 1st witness told him that the appellant shot his brother dead and ran away.

We do not find anything in the examination of these witnesses to suggest that they are falsely implicating the appellant. Extracts from the statements said to have been made by them at the time of the inquest have been put in to show that they are now enlarging upon the statements that they originally made; but, as pointed out by the Sessions Judge, there is reason to suspect the accuracy if not the bona fides of the inquest proceedings held by the Taluk Inspector.

In the report Exhibit P.1, that was sent the next morning by the Patel (the 4th witness for the prosecution) to the Police Station, the information given by Hutcha (the 1st witness for the prosecution) is reproduced with this difference that he is represented to have said that the people of the village came on hearing the galata (i.e. Byra's cries), and that the appellant then took the gun and shot at the people standing. It is possible that this was an intentional variation by the Patel, (who, it may be observed in passing, lives five miles from Suntikoppa where he ought under the rules to reside), a variation made in consultation with the other Patels whom he had admittedly taken into confidence; in any case, it does not help the defence in any way. It is not the case for the appellant as put forth either before the Committing Magistrate or in the Court of Session that he himself held the gun and that when he was attacked by villages the gun went off accidentally. The report Exhibit P.3 which he sent off ~~xxxxxxxxxxx~~ to the Station House Officer on the morning after the occurence merely states "that the villagers were struggling with one another", and that while they were so struggling the gun went off, and Hala died from the effect of it. In his defence at the trial he improves upon this by adding that the villagers brought another gun with them which they left behind in the temple, and took away the one which had gone off and hit Hala, ~~xxx~~ a patently false story which the defence 2nd and 3rd witnesses have been

suborned

suborned to support. It is much more probable that the villagers collected at the spot after hearing the report of the gun than that they merely came in response to Byra's cries and in order to resist the Police constable in the execution of what presumably lay within the scope of his duties..

The medical evidence shews that the shot must have been fired from a distance of only about a foot; and this taken in conjunction with the words that passed between the appellant and the deceased, strongly suggests that the former must have deliberately aimed at the latter. In the circumstances we cannot but uphold the conviction of the appellant for murder; and the sentence of transportation for life, which the Sessions Judge has awarded on the ground that there was no premeditation, is the least that the law allows to be inflicted. The appeal is accordingly dismissed.

In conclusion we regret to observe that the Amildar (the defence 1st witness Mr. Chakrapani Rao) failed in his duty as head of the Taluk Police in not himself undertaking the investigation of a serious case of this kind in which a first class Police Constable was accused of committing a murder; his explanation that he "thought the Inspector's investigation was as good as myself (sic)" is no explanation at all for so glaring a neglec of duty on his part.

Sd/- K.S. Chandrasekhara Aiyar,

J u d g e.

Sd/- T. Paramasiva Iyer,

J u d g e.

"C O P Y"

Registrar.

G. R S. VI—S-III/33]

**DRAFT.**

SUBJECT .....

.....

.....

**Section.** cls
**File No.** 228-18
**Serial No.** 2

No. 1/2148

To Court Records

*The Registrar of the Chief Court of Mysore.*

*Diary No. of letter replied to*.....

GENERAL AND REVENUE SECRETARIAT,

( )

*, the*.....*191*

*Date of issue*.....19/6/19

*Signed by*.....

SIR,

I am directed to forward herewith for information of the Judges of the Chief Court and for communication to the prisoner..... D'Souza .....

.....

undergoing sentence of.....transportation for life ..... in the Bangalore Central Jail, copy of order passed by H. H. the Maharaja of Mysore, on the prisoner's memorial, commuting the sentence to one of rigorous imprisonment for seven years.

2. The entire records received with your letter No.....525..... dated .....17th March.....1919 are herewith returned.

I have, etc.,

D. M. 12/6

for Chief Secretary.

867

11/6

Appl 1916

*In the Matter of a Memorial of* D'Souza praying for remission of the sentence of transportation for life passed on him in Shimoga sessions case No 6 of 1917-18 on the file of the Sessions Judge of Shimoga and confirmed in criminal Appeal No. 14 of 1918-19 on the file of the Chief Court.

*His Highness the Maharaja*

*has been pleased to*

direct that the sentence of transportation for life be commuted to one of rigorous imprisonment for seven years.

Date of order 7th. June 1919

D 11/2/16

CBJ 18/6/19.

Dewan.

WD 02264—GPB—500—5-2-17

Draft)